IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1038 of 2003

Date of decision 28.5.2007

Nikna Ram Petitioner

Vs.

Union of India and anr. Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] No.

For the Petitioner: Ms. Vandana Kuthiala, Advocate.

For the Respondents : Mr.Ashwani Pathak, Central Govt. Counsel for respondent No.1

M.S.Chandel, Advocate General, with Ms.Meenakshi Sharma, Dy.A.G., for respondent No.2.

Rajiv Sharma, J.

The petitioner claiming himself to be a freedom fighter had submitted an application to the respondent No.1 Union of India for grant of pension under Swantantarta Sainik Samman Pension Scheme, 1980. The application preferred by him was rejected on 8th July, 1982. He submitted fresh application on 25.6.1985 enclosing with it the certificate issued by Sh.Kahna Ram dated 19.6.1985. He filed a writ petition in this court bearing CWP No.428 of 1990 and the same was allowed by this Court on 12.12.1990. This Court has categorically held in the judgment dated 12.12.1990 that Kahna Ram was fully eligible to issue certificate in favour of the petitioner since he had undergone imprisonment for 5 years. This Court accordingly directed the respondent to reconsider his case for freedom fighter pension and pass appropriate orders. His case was again

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

rejected on 3.6.1991. Feeling aggrieved by order dated 3.6.1971 he again approached this Court by way of filing writ petition bearing CWP No.808 of 1992. The writ petition No.808 of 1992 was dismissed having not pressed.

The petitioner was declared freedom fighter by respondent No.2 on 21.5.1996. He again sent an application/reminder to respondent No.1 on 7.10.1996 for the grant of pension under the Scheme. It will be apt to mention at this stage that the Central Government had issued Circular No.14 of 1977 dated 12.8.1977 to the effect that the pension case should be finalized only on the recommendation of the State. The copy of this circular has been placed on the paper book of this petition at page 32 (Anenxure PH). When no decision was taken on the reminder of the petitioner he approached this Court by way of CWP No.248 of 1998 which was disposed of by this Court on 29.5.2003 and the operative portion of the judgment is reproduced as under :

> "13. In view of the reply-affidavit submitted by respondent No.1 and the fact that no decision has been taken on the application made by the petitioner on 7.10.1996 and forwarded to it by respondent No.2 on 16.5.1998, the only direction which can be issued at this stage is to direct the respondent No.1 to take a decision in the case on the basis of the case forwarded to it positively within a period of three months from today and to intimate the petitioner accordingly. It is clarified that in the event of grant of Freedom Fighter's Pension to the petitioner, the entire arrears of such pension shall be paid to the petitioner within one month of the taking of the decision by respondent No.1 in the matter. In the event of the decision going against the petitioner, liberty is reserved to him to approach this Court again."

The case of the petitioner was again rejected despite direction issued by this Court in CWP No.248 of 1998. Copy of the rejection letter is dated 8th August, 2003 (Annexure PK). Ms.Vandana Kuthiala, learned counsel for the petitioner has strenuously argued that despite the repeated directions issued by this Court the respondents have not granted freedom fighter pension to her client. Mr.Ashwani Pathak, learned Central

Government Counsel for respondent No.1 has supported the decision dated 8.8.2003.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

It is evident from circular No.14 of 1977 dated 12.8.1977 that no pension was to be sanctioned in future except on the basis of State Government's verification and recommendation. In the present case the petitioner has been declared freedom fighter by the State on 21.5.1996. He has been declared freedom fighter by the State on the basis of the certificates submitted by him to the State Government. The State had recommended his case to the Government of India on 16.5.1998. The State had clarified to the Government of India that in the case of the petitioner, certificates from Kahna Ram main freedom fighter and Kartar Singh, Ex Deputy Superintendent of Police have been projected which themselves confirm his suffering. It was on the basis of this letter dated 16.5.1998 that this Court in CWP bearing No.248 of 1998 had directed the Government of India to reconsider his case while rejecting the case of the petitioner only a portion of the letter has been reproduced in para 'C' while ignoring the recommendations made by the State Government on the basis of the certificates issued by Kahna Ram and Kartar Singh. It was incumbent upon the Government of India to consider letter dated 16.5.1998 in its entirety instead of considering a portion of it without considering the main recommendation dealing with the issuance of certificates in favour of the petitioner. Once the recommendation had been made by the State Government and he had also been declared as freedom fighter by the State the case of the petitioner was to be accepted and the pension was to be released in his favour. It is strange that despite the mandatory directions issued by this Court the Government of India has not taken appropriate decision on the basis of material produced before it more particularly the recommendation dated 16.5.1998 in conformity with

circular dated 12.8.1977. The certificates produced by the petitioner have been conveniently over looked only on the ground that they are not in the prescribed form. The Swantantarta Sainik Samman Pension Scheme, 1980 has been promulgated to mitigate the hardship being faced by the freedom fighters. What was required to be seen in the spirit of the scheme was the substance without insisting upon a particular proforma. Accordingly the case of the petitioner is covered under sub clause (c) of clause 4 of the Scheme since he suffered externment on the basis of the order passed by the erstwhile Raja of Bilaspur estate. The petitioner had produced sufficient material on record to the effect that he was externed by the erstwhile Raja of Bilaspur. Accordingly this petition is allowed. Annexure PK dated 8.8.1993 is quashed and set aside. The respondents are directed to release freedom fighter pension to the petitioner with effect from 16.7.1981 with interest at the rate of 9% p.a. The respondents are further directed to work out the details of the monetary benefits payable to the petitioner within a period of eight weeks from today.

May 28, 2007(g) **(Rajiv Sharma), J.**